

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alona Katz	Team: Team # 9	CCRB Case #: 200101530	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/26/2000 12:30 AM	Location of Incident: Halleck and Ryawa Street near the Vernon C. Baines floating detention center.	Precinct: 41	18 Mo. SOL 6/26/2002	EO SOL 6/26/2002	
Date/Time CV Reported Mon, 03/05/2001 1:59 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 03/05/2001 1:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alfredo Mendez	27875	921583	041 PCT
2. SGT Christophe Schmidt	02029	907284	040 PCT
3. SGT Mark Gossin	03035	896406	INT CIS
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jason Allison	07550	921912	041 PCT
2. POM Jose Colon	04450	925096	040 PCT
3. CPT Charles Girven	00000	893101	PBBX
4. POM Aristotl Psathas	11719	907099	041 PCT
5. POM Jose Otero	09385	924290	041 PCT
6. POM Daniel Donnelly	23918	892987	041 PCT
7. POM Jamerson Black	29038	921153	040 PCT
8. POM George Colon	31363	921223	041 PCT
9. POM Peter Borowski	14773	903465	041 PCT
10. POM Kevin Rogers	12112	918243	041 PCT
11. POM Elido Capella	06973	918521	PBBX TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Alfredo Mendez	Discourtesy: Officer Mendez spoke obscenely to § 87(2)(b)	
B.SGT Christophe Schmidt	Force: Sgt. Schmidt used physical force against § 87(2)(b)	
C.SGT Christophe Schmidt	Off. Language: Sgt. Schmidt made remarks to § 87(2)(b) based upon race.	
D.SGT Mark Gossin	Force: Sgt. Gossin used physical force against § 87(2)(b)	
E.SGT Mark Gossin	Abuse: Sgt. Gossin threatened § 87(2)(b) with the use of force.	
F. Officers	Force: Officers used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G.POM Alfredo Mendez	Force: Officer Mendez used physical force § 87(2)(b) [REDACTED]	[REDACTED]

## Synopsis

On December 26, 2000 at 12:04 AM, § 87(2)(b) was placed under arrest for § 87(2)(b) following a car chase through the 40 and 41 Precincts in the Bronx. The pursuit concluded on Halleck and Ryawa Street, which is a dead-end entrance to the Vernon C. Baines correctional department barge for juveniles, where § 87(2)(b) § 87(2)(b) drove his car head-on into an RMP. Following the accident, § 87(2)(b) was placed into custody, at which time he alleges that Sgt. Schmidt, Sgt. Gossin, PO Mendez, as well as unidentified officers used physical force (Allegations B, D, F, G). § 87(2)(b) additionally alleges that Sgt. Schmidt, Sgt. Gossin, and PO Mendez threatened him and used discourteous and offensive language (Allegations C, E, and A). § 87(2)(g)

### Summary of Complaint

## Initial Complaint Letter

On March 5, 2001, the CCRB received a letter (enc. Folder I-3) from § 87(2)(b) written Jan 14, 2001 from Rikers Island. In his letter § 87(2)(b) explains that while in the vicinity of § 87(2)(b) to visit his daughter, he noticed a police car behind him. § 87(2)(b) admits that he was driving too fast and did not stop immediately after noticing the police car, but proceeded to the hospital. After a chase, § 87(2)(b) was forced to stop in order to prevent an accident. Upon stopping, officers from two police vehicles snatched § 87(2)(b) out of his car as they cursed and threatened him saying, “This fucking black bastard. Get him.” As § 87(2)(b) was grabbed by his jacket collar, another officer hit him with a baton. § 87(2)(b) was taken to the ground and kicked and stomped upon. An officer who had just arrived on the scene ran over and “busted” § 87(2)(b) in the face. § 87(2)(b) sustained bleeding, bruises, and swelling. An officer said, “Why don’t we waste his ass here? There’s no one around.” As § 87(2)(b) begged the officers not to kill him, another officer, identified as PO Colon by § 87(2)(b) intervened. § 87(2)(b) was taken to the precinct as well as the hospital for medical treatment. On the way to the hospital, an officer told § 87(2)(b) “Merry Christmas mother-fucker.”

## CCRB Interview

Investigator Kaplan and Investigator Lu interviewed § 87(2)(b) at the CCRB on March 14, 2001 (enc. Folder I-5A-D). § 87(2)(b) has only his right leg and prefers to use crutches rather than wear prosthesis. § 87(2)(b) stated that he initially filed a complaint immediately after this incident, however, there is no record of this earlier complaint with the CCRB or IAB.

§ 87(2)(b) left his home on Long Island for the Bronx to pick up his wife, § 87(2)(b). He was driving a 1989 Red Grand-Am. § 87(2)(b) admitted that he knew the license plate and registration tags were illegal and “bogus” and he could be pulled over but decided to take this risk because he did not think he would get caught. After picking up his wife, he drove to § 87(2)(b) around midnight to visit his stepdaughter who was in the emergency room. Upon arriving at the hospital, § 87(2)(b) noticed red and white flashing lights and an unmarked vehicle pulled up along side of his vehicle. PO1 (White male, plain clothes, tall, skinny, baseball cap), later identified as Sgt. Schmidt, jumped out of the car and walked towards § 87(2)(b). PO2 (Puerto-Rican male), later identified as PO Jose Colon, was a passenger in the car. § 87(2)(b) did not know this was a police vehicle nor did he think the person walking towards him was a police officer. § 87(2)(b) did not wait to speak with this person. Instead, he panicked and sped away in his car travelling over seventy miles an hour at times and

running red lights. After about ten minutes of driving, his wife fell out of the car when he took a turn. At one point, § 87(2)(b) looked in his rear view mirror and only saw the same unmarked vehicle from the hospital, which he still did not believe to be affiliated with the NYPD.

§ 87(2)(b) does not know how far he traveled or for how long when he came upon a cul-de-sac and was subsequently blocked in by 10-15 RMPs. § 87(2)(b) recognized the RMPs as police cars but still did not think the unmarked car from the hospital was a police vehicle. He then attempted to turn around and exit the cul-de-sac because he knew his license plates weren't right but an RMP blocked his exit. The unmarked car from earlier was to the right side of the RMP. As he tried to get in between the RMP and the sidewalk, § 87(2)(b) rammed the front of the marked RMP, at about the hood/bumper of the operator side.

Officers approached his vehicle, opened the car door, and Sgt. Schmidt snatched § 87(2)(b) out and threw him face down on the ground. When asked during his CCRB interview if the officers ordered § 87(2)(b) out of his vehicle, § 87(2)(b) stated, "they ordered shit, all they did was snatch me out of the car and start whooping on me." Sgt. Schmidt put his foot on § 87(2)(b)'s back and hit § 87(2)(b) in the back of the head with his hand (Allegation B). He also placed the handcuffs on § 87(2)(b). In a photo array conducted on November 8, 2001, § 87(2)(b) additionally alleged that Sgt. Schmidt told the other officers "whip the nigger ass" (Allegation C). § 87(2)(b) was unable to identify any of the officers who punched or kicked him at that time because he was face down (Allegation F). Other officers stood around and watched. § 87(2)(b) estimated that he was kicked three times and punched several times though he was not resisting. Sgt. Schmidt picked him up off the ground and made § 87(2)(b) hop to the same unmarked vehicle that initially approached him. § 87(2)(b) believed he was already bleeding by this point but didn't realize it at the time because he thought he was sweating. PO 3 (white male, tall, sandy colored hair, in uniform), later identified as Sgt. Gossin, approached and punched § 87(2)(b) in the stomach (Allegation D). PO 4 (short, white male, uniform), later identified as PO Mendez, approached and kicked § 87(2)(b) dead in the chest (Allegation G), causing him to fall back into the vehicle. § 87(2)(b) stated that he did not hit his head as he fell back into the vehicle. PO Mendez then told him, "you better not have Aids" (Allegation A). In a November 8, 2002 photo array § 87(2)(b) made a similar allegation of discourtesy against PO Mendez. § 87(2)(g) § 87(2)(b) recalled the discourteous remark as "Do you have HIV mother-fucker." Sgt. Gossin approached the vehicle in which § 87(2)(b) was seated, stuck his head through the window and stated, "Merry Christmas mother-fucker, you're going to die tonight" (Allegation E). In a November 8, 2002 photo array § 87(2)(b) made a similar allegation of discourtesy against Sgt. Gossin. § 87(2)(g) § 87(2)(b) recalled the remark as "Merry Christmas mother-fucker because you are going to die tonight nigger."

PO Jose Colon took § 87(2)(b) to the 40 Precinct house. He was frisked and placed in a cell by himself. § 87(2)(b) stated that he was bleeding while in the cell and later taken to § 87(2)(b). At the hospital § 87(2)(b) recalled PO Jose Colon asking a PO Black (uniform) how to fill an injury form for the hospital. § 87(2)(b) recalled that PO Black told PO Jose Colon to write down he sustained the injuries from a car accident which is untrue. § 87(2)(b) told the officers, "that's a damn lie motherfuckers, you know you beat me up" and that he sustained these injuries from being beaten. He left the hospital after two hours and returned to the 40 Precinct house. § 87(2)(b) stated that he was "cold sober" the night of the incident.

### **Results of Investigation**

This case was originally assigned to Investigator Kaplan on March 5, 2001. The case was reassigned to Investigator Kabakoff on March 30, 2001 and reassigned again to this investigator on May 11, 2001.

### **Witness Identification**

§ 87(2)(b) identified his wife, § 87(2)(b) as the passenger in the car for the initial part of the vehicle pursuit (enc. Folder I-5A-D).

On May 31, 2001, a field trip was conducted to the vicinity of Ryawa and Halleck St to canvas for potential civilian witnesses. However, the area was desolate and industrial (enc. Folder I-8C).

### **Witness Statement**

Investigator Kaplan interviewed § 87(2)(b) over the telephone on 03/16/01 (enc. Folder I-7A-B). On 12/26/01 at approximately 10:30 PM, § 87(2)(b) picked § 87(2)(b) up at her mother's house in the Bronx to visit their daughter at § 87(2)(b). After visiting the hospital, they planned to return home. At § 87(2)(b) as § 87(2)(b) prepared to turn the car into the emergency room entrance, § 87(2)(b) heard a "boop boop" sound, which she believed to be a siren. § 87(2)(b) also recalled a few seconds of flashing lights. § 87(2)(b) pulled the car over and an unmarked vehicle pulled up on the left side (driver's side) of the car. § 87(2)(b) stated that she could tell the passengers in the other vehicle were police officers. § 87(2)(b) however, was panicking and could not. § 87(2)(b) thought she heard PO1 (white, male, heavy set, with black hair) say, "Don't move the vehicle." § 87(2)(b) believed they were stopped because the license plates on the car "weren't correct." At this point, § 87(2)(b) took off in the car. § 87(2)(b) asked him why he was running and tried to convince him to stop. § 87(2)(b) kept insisting he did not know why he was being chased. She estimated that he was driving above 30 but under 60 miles per hour. § 87(2)(b) took off her seatbelt in anticipation of jumping from the vehicle. The § 87(2)(b)'s vehicle was on the Grand Concourse and 149<sup>th</sup> St, when § 87(2)(b) looked behind her and saw at least 10 police cars following. As § 87(2)(b) took a left turn on 182<sup>nd</sup> and Longwood Avenue, the impact of the turn caused the car door to fly open and § 87(2)(b) fell out. § 87(2)(b) was worried that she might be injured and attempted to flag down one of the police cars but none stopped.

Eventually, § 87(2)(b) took a taxi back to her mother's home on § 87(2)(b). When one of her brothers called the precinct to inquire after § 87(2)(b) an officer told him, "Yeah, we got him and he got just what he deserved." It was after 1 AM when § 87(2)(b) went to the 41 precinct. The police did not permit her to visit with § 87(2)(b) but she was able to glimpse him through a window in the holding cell and saw a bloody cloth around his head. She spoke to a white male police officer (6'1, slim build) that told her § 87(2)(b) was OK but at the hospital. § 87(2)(b) called § 87(2)(b) later in the evening from Rikers and told her that the police had hit him with a baton on the back of his head. On January 2, 2001, § 87(2)(b) was able to visit § 87(2)(b) on Rikers Island. She described him as bruised with a scar on his front forehead. She also observed stitches to the back of his head. He informed her that he was being taken for chest X-rays that day because the nerves in his right arm were trembling as a result of the police beating.

### **OFFICER IDENTIFICATION**

According to BADS, PO Jose Colon was the arresting officer for § 87(2)(b) (enc. Folder III-5). According to Roll Call from the 40 Precinct (enc. Folder III-16G) and PO Jose Colon's CCRB statement (enc. Folder II-1A-D), Sgt. Schmidt was PO Jose Colon's partner the night of December 26, 2000. According to the SPRINT print out (Folder III 3A-C) and audio recording, all sectors from the 41 Precinct responded to the scene. According to Roll Call from the 41 Precinct (enc. Folder III-15A-F), the responding officers were therefore, Sectors AD: PO Allison and PO Psathas, Sectors BC: PO Borowski and PO Giesen, Sectors EFI: PO Rogers and PO Capella, Sectors GHJ: PO Colon and PO Mendez. PO Donnelly and PO Otero are assigned to Grand Larceny Auto conditions. According to Line of Duty reports and officer statements (enc. Folder III – 10A-B, 11A-D), PO Otero and PO Donnelly were assigned to the RMP involved in the head on collision. § 87(2)(b) identified PO Black by name as the officer involved in preparing his medical documentation for the hospital. The unusual occurrence report (Folder III-1) additionally identifies Sgt. Schmidt, PO Otero, PO Donnelly, PO Allison, PO Psathas, Sgt. Gossin, PO Colon, and Capt. Gervin as present at the scene.

A photo array of officers identified as being on the scene was conducted with § 87(2)(b) at Rikers Island on November 8, 2001 (enc. Folder 1-6A-U). § 87(2)(b) could not remember PO Borowski, PO Giesen (PO Giesen did not witness the allegations and was not interviewed), PO Allison, PO Otero, PO Donnelly,

PO Psathas, PO George Colon, and PO Rogers being at the scene. He recalled seeing PO Capella, Sgt. Harvey (according to Roll Call Sgt. Harvey was the desk supervisor and was not interviewed), and Captain Girven but could not specify their role in the incident. § 87(2)(b) identified Sgt. Gossin as an officer who participated in kicking and punching him in the stomach. § 87(2)(b) additionally alleges that after he was in the police car, Sgt. Gossin told him “Merry Christmas mother-fucker because you are going to die tonight nigger.” § 87(2)(b) identified PO Mendez as the officer who kicked him into the squad car after he was handcuffed and asked him, “Do you have HIV mother-fucker?” § 87(2)(b) identified PO Jose Colon as the officer who escorted him to the precinct and refused to loosen his handcuffs. § 87(2)(b) identified Sgt. Schmidt as the officer who yanked him from the car. Sgt. Schmidt allegedly sat on top of § 87(2)(b) and punched him. He then told the other officers to “whip the nigger ass.”

## **SUBJECT OFFICERS**

### **PO Mendez**

PO Mendez was interviewed at the CCRB on August 8, 2001 (enc. Folder II-6A-E). On December 26, 2000, PO Mendez was partnered with PO Colon, working in uniform, and assigned to conditions in the 41 Precinct, in RMP #1520.

PO Mendez recalled a call for assistance over divisional radio involving a vehicle pursuit. § 87(2)(b)'s vehicle passed by PO Mendez on the Bruckner Expressway and he joined in the pursuit until it concluded on Halleck near Ryawa Street where there was a head on collision between § 87(2)(b)'s vehicle and a police vehicle that was very close to PO Mendez. After the accident, PO Mendez exited his vehicle to assist in handcuffing § 87(2)(b). He did not remember his partner, PO George Colon, exiting the vehicle. On his way, he looked in POs Donnelly and Otero's car. The door to the police vehicle involved in the accident appeared damaged. The airbags had deployed, and it seemed that PO Otero and PO Donnelly were having difficulty trying to exit. Other officers came to their assistance.

When PO Mendez left his vehicle, he saw § 87(2)(b) facedown on the ground. PO Mendez did not see the defendant exit his vehicle or how he came to be on his stomach. A group of officers were attempting to handcuff him. § 87(2)(b) was resisting by keeping his arms against his chest and moving around. PO Mendez assisted by holding down on § 87(2)(b)'s left shoulder but could not recall if § 87(2)(b) was trying to push himself up. The struggle lasted about a minute or two. PO Mendez was focused on holding § 87(2)(b)'s shoulder and could not identify the other officers involved. As soon as § 87(2)(b) was handcuffed, PO Mendez left the area and did not see what happened after that.

After looking at photos of officers present at the scene, PO Mendez identified PO Donnelly and PO Otero as being involved in the accident. He did not recall PO Jose Colon, Sergeant Gossin or Captain Girven at the scene. He recalled PO George Colon, PO Psathas, PO Allison, and Sergeant Schmidt as being present at the scene but not involved in the handcuffing.

PO Mendez characterized his use of force (pushing on the defendant's shoulder) as necessary to effect arrest and denied any other use of force. PO Mendez denied speaking discourteously to § 87(2)(b).

### **Sgt. Gossin**

Sgt. Gossin was interviewed at the CCRB on January 7, 2002 (enc. Folder II-10A-E). On Dec 26, 2000 Sgt. Gossin was Patrol Supervisor of the 041 Precinct. He was working in uniform and assigned to marked patrol car #2025.

Around 11:55 PM, Sgt. Gossin was on administrative detail at the 41 Precinct house and heard a 10-85 come over divisional radio for a car chase in progress. Once he heard that the chase had entered the Hunt's Point area, Sgt. Gossin took an RMP and began driving there. On the way, Sgt. Gossin heard over the radio that a vehicle had rammed an RMP. His memo-book reflects that he arrived at Halleck and Ryawa

around 12:18 AM, however, Sgt. Gossin admitted that he is not sure if he recorded that time as he arrived or did it later from memory or the rundown. Sgt. Gossin described the scene as a cul-de-sac with about 10-12 RMPs scattered around the road and the perpetrator's car further back towards where a correctional facility barge is located. There appeared to be about 20 officers present, mostly grouped around the collided cars. Sgt. Gossin parked his car behind the grouped RMPs and proceeded towards the two cars that appeared to have been involved in a collision. He observed PO Otero and PO Donnelly, standing nearby the RMP that had been in the collision. They told Sgt. Gossin that the perpetrator had rammed them and they appeared to be in pain. Sgt. Gossin asked an officer where the perpetrator was and the officer pointed towards a vehicle further away from the correctional facility. Sgt. Gossin believes he might have taken a look at the perpetrator, § 87(2)(b) who was sitting in a police car. At some point, Sgt. Gossin vaguely recalls the perpetrator being taken from the car. He was about 20 feet away. He recalled that the perpetrator had one leg with an officer holding him up. He did not recall seeing any injuries or bleeding. Sgt. Gossin recalled seeing PO Mendez and his partner PO Colon at the scene. He also talked with PO Giesen, PO Borowski, and the Duty Captain. Sgt. Gossin stated that at the point that he arrived at the scene he did not observe anything out of the ordinary from a normal arrest situation. Sgt. Gossin stated that besides the fact that the perpetrator was missing a leg he probably wouldn't have remembered him. According to his memo-book, Sgt. Gossin was back at the precinct house at 1 AM.

Sgt. Gossin denied telling § 87(2)(b) "Merry Christmas mother-fucker because you are going to die tonight nigger." Sgt. Gossin denied using any physical force against § 87(2)(b)

### **Sgt. Schmidt**

Sgt. Schmidt was interviewed at the CCRB on January 17, 2002 (enc.Folder II-11A-D). On December 26, 2000, Sgt. Schmidt was working a 2300 x 0750 tour. He was in uniform, acting as patrol supervisor and partnered with PO Jose Colon as his operator. They were driving an unmarked RMP.

On the night of December 26, 2000, while in the vicinity of § 87(2)(b), Sgt. Schmidt attempted to stop a vehicle whose faulty license plate he had run through the computer. After activating his lights and siren, the vehicle, driven by § 87(2)(b) took off at a high rate of speed, northbound on Park Avenue and turning eastbound on 149<sup>th</sup> Street. The chase crossed from the 40 Precinct into the 41 Precinct. Throughout the chase the passenger door opened and closed as § 87(2)(b)'s vehicle slowed down and then sped up when the RMPs drew close. At some point in the 41 Precinct, § 87(2)(b) took a hard left and a female, § 87(2)(b) fell out. Sgt. Schmidt was not aware of any units stopping to aid her. The chase entered the Hunt's Point area. Towards the end of the chase, there were several police vehicles in between Sgt. Schmidt and § 87(2)(b). Sgt. Schmidt lost sight of § 87(2)(b) briefly towards the end of the chase; he regained sight just as a head on collision between § 87(2)(b) and an RMP occurred. Another RMP was directly alongside the hit RMP. During his CCRB interview, Sgt. Schmidt was shown photos of Halleck and Ryawa Street and affirmed that was the location where the chase concluded.

Sgt. Schmidt pulled up and exited the vehicle. It was a dark night, but lit with streetlights. There were several RMPs between Sgt. Schmidt and § 87(2)(b). Sgt. Schmidt has participated in vehicle chases before and affirmed that as in other chases his adrenaline was pumping but he was in control. Two officers took § 87(2)(b) out of the car. At least 6 officers were already out of their vehicles. Sgt. Schmidt approached to ensure no officers got hurt. § 87(2)(b) was taken to the ground and handcuffed by a few officers as he flailed his arms and resisted. Officers then placed § 87(2)(b) in the back of Sgt. Schmidt's car. Sgt. Schmidt explained that he had tunnel vision throughout the incident and was not sure what PO Colon was doing but knew he was in the same vicinity. Sgt. Schmidt collected § 87(2)(b)'s pedigree information and asked him why he ran. § 87(2)(b) seemed resigned and responded. Sgt. Schmidt recalled that § 87(2)(b) had blood on his head and thought that it was from the car accident. § 87(2)(b) was taken back to the 41 Precinct where his arrest was processed.

Sgt. Schmidt denied saying, "whip the nigger ass." Sgt. Schmidt denied using any type of physical force against § 87(2)(b)

## **WITNESS OFFICERS**

On Dec 26, 2000, PO Jose Colon (enc.Folder II- 1A-D) was in uniform, partnered with Sgt. Schmidt, and assigned to an unmarked car to address Grand Larceny Auto conditions. At one point during their tour, Sgt. Schmidt and PO Jose Colon ran the license plate number of a car through their MDT. When the query came back on the MDT, it showed that the plates were registered to a car that did not match the make and model of the car they were on. PO Jose Colon turned on his car's flashing lights and the driver, § 87(2)(b) pulled over. As PO Jose Colon and Sgt. Schmidt began to exit their car, § 87(2)(b) sped away. PO Jose Colon and Sgt. Schmidt got back in their car and pursued. The chase crossed the border of the 40 Precinct, entering the 41 Precinct. RMPs from the 41 Precinct joined in the pursuit. PO Donnelly (enc.Folder II- 4A-D), PO Otero (enc.Folder II- 5A-D), PO George Colon (enc.Folder II- 7A-E), PO Allison (enc.Folder II- 3A-D), PO Psathas (enc.Folder II- 2A-D), PO Borowski (enc.Folder II- 12A-E), PO Capella (enc.Folder II- 14A-D), and PO Rogers (enc.Folder II- 13A-E), of the 41 Precinct all corroborate that they joined or responded to the site of the pursuit following a divisional broadcast that a 40 Precinct unit engaged in a vehicle pursuit and was entering the 41 Precinct. PO Jose Colon's car stalled and he lost sight of § 87(2)(b)'s vehicle

All officer statements corroborate that the chase concluded at Halleck and Ryawa Street, in a dead end area leading up to the entrance to the Vernon C. Baines floating detention center. PO Donnelly and PO Otero parked their RMP in the middle of the road in an attempt to block in § 87(2)(b)'s vehicle. PO George Colon's statement corroborates that police cars were lined up facing § 87(2)(b)'s vehicle. PO Otero describes § 87(2)(b)'s vehicle as pausing for a moment before accelerating towards them. PO George Colon swerved to the side and § 87(2)(b)'s vehicle rammed into PO Otero and PO Donnelly's car, causing a head on collision.

PO Donnelly stated that both he and PO Otero were "smacked in the face" with the deployed airbags and disoriented. There was dust in his eyes and PO Donnelly was unable to see anything that was happening outside the vehicle. PO Donnelly and PO Otero had to struggle to exit the damaged vehicle. PO Donnelly sustained injuries to his neck, back, and right leg. PO Otero sustained neck and back injuries as well as contusions and swelling of the left knee. An ambulance arrived soon after.

During both interviews, this investigator presented a copy of the Unusual Occurrence Report (enc.Folder III-1) that read, "Both PO's suffered back and knee injuries and were transported by EMS to § 87(2)(b) . . . Despite their injuries, both officers were instrumental in subduing the perp." PO Donnelly and PO Otero denied having a role in subduing § 87(2)(b) besides being involved in the car chase.

According to PO George Colon, immediately following the accident, PO Mendez exited the vehicle. By the time PO George Colon exited, he had lost sight of his partner. He estimated that he lost sight of his partner for about 10 minutes.

After restarting the car, PO Jose Colon continued in the direction of the chase and saw flashing lights from RMPs in the distance. PO Jose Colon drove toward the lights and arrived at a dead end street near the entrance to the Vernon C. Bain floating detention center. The distance from this location to where PO Colon's car had stalled was about one-half of one mile. The time that lapsed between when PO Colon's car stalled and when he arrived at the dead end street was about four or five minutes.

All officers interviewed described the lighting conditions as dark, but partly illuminated by police vehicles and street lights from the correctional facility. From what PO Jose Colon observed, it appeared that § 87(2)(b) had run head on into a RMP. About six marked RMPs had already responded to the location. About 10 feet away from him, § 87(2)(b) lay face down on the ground. Three or four officers were trying to get one of his arms out from under his chest. PO Jose Colon heard officers saying, "Give me your arm, give me your arm." § 87(2)(b)'s other hand was already cuffed. § 87(2)(b) resisted by kicking with his leg and keeping his hand under him. This struggle went on for a few minutes until § 87(2)(b) was handcuffed and walked over to PO Jose Colon's car. PO George Colon corroborates that about 8



officers were standing around § 87(2)(b) and several officers were involved in handcuffing him. However, from his angle, PO George Colon could not tell if there was a struggle. All the officers involved had their backs to him and PO George Colon could not identify them. Before they entered the ambulance that had been called, PO Otero and PO Donnelly recalled seeing § 87(2)(b) lying on his side handcuffed. Neither PO Donnelly nor PO Otero observed a struggle. PO Jose Colon stated that neither he nor his partner, Sgt. Schmidt, assisted in handcuffing § 87(2)(b). As § 87(2)(b) was escorted to the car, PO Jose Colon observed bleeding to the back of § 87(2)(b)'s head area. PO Colon believes that § 87(2)(b) sustained his injuries from the car accident. § 87(2)(b) stated, "I ain't saying nothing. I ain't fucking talking."

Captain Girven, PO Rogers, PO Capella, PO Borowski, PO Giesen, PO Allison, and PO Psathas arrived after § 87(2)(b) had been placed in the police vehicle. Both PO Allison and PO Psathas recalled taking a glimpse at § 87(2)(b) who was sitting in the back of a vehicle. Neither of the officers observed any bleeding or injuries. PO Rogers and PO Giesen were instructed by Sgt. Gossin to escort PO Otero and PO Donnelly to the hospital.

After arriving at the scene, Captain Girven asked an unidentified officer if the perpetrator had tried to flee on foot and was told that the perpetrator had only one leg. Captain Girven was also informed that the perpetrator never even exited the car, he was just grabbed out by officers. At some point, Captain Girven approached the vehicle in which the perpetrator was seated in order to inspect whether there were any injuries he needed to take action for. He looked in through the window and did not observe any injuries or bleeding. When presented with a copy of the 40 Precinct command log (enc. Folder III- 12J), in which Captain Girven had signed in the evening of December 26, he stated that he was there for a station house inspection and signed the command log before he left. He had no interaction with the perpetrator at the station house.

PO Jose Colon escorted § 87(2)(b) to the 40<sup>th</sup> Precinct stationhouse. PO Jose Colon stated that while § 87(2)(b) was in the cell at the precinct he repeatedly said, "I fucked up." PO Jose Colon later escorted § 87(2)(b) to the hospital. PO Jose Colon later learned from a medical form that § 87(2)(b) had sustained a laceration to the back of his head.

Although he did not initially recall having any interaction with § 87(2)(b) PO Black's memo-book shows that at 2 AM he escorted a perpetrator to § 87(2)(b). After being shown a mug shot of § 87(2)(b) and being informed that he had one leg, PO Black recognized § 87(2)(b) as the perpetrator he escorted to the hospital but did not know what kind of treatment § 87(2)(b) received nor could he recall any injuries § 87(2)(b) had. PO Black was not involved in preparing any related paperwork.

All officers denied having or witnessing any officers with their batons drawn. All officers denied committing as well as witnessing all the allegations.

### **Police Documents**

According to the Roll Call of Tour 1 for the 41 Precinct (enc. Folder III-15A-F), Sgt. Gossin was the Patrol Supervisor. PO Allison and PO Psathas were assigned to sectors AD. PO Borowski and PO Giesen were assigned to sectors BC. PO Rogers and PO Capella were assigned to sectors EFI. PO Otero and PO Donnelly's assignment was Grand Larceny Auto. PO Colon and PO Mendez were assigned to sectors GHJ. At 0136, the command log for the 040 lists the arrest of § 87(2)(b) (enc. Folder III-12A-J). Arrest time is given as 0004 and the arresting officer is PO Colon of the 040. The charge is identified as § 87(2)(b). The command log also reflects a visit by PBBX Duty Captain Girven at 0125.

The narrative of the OLBS and arrest report from BADS (enc. Folder III-4-5) prepared by PO Jose Colon reads "At TPO, perp fled officers, embarking on a 3 mile 5 minute chase, almost causing several accidents – perp intentionally rammed marked RMP head-on causing injuries to 2 PO's and damaging RMP – perp w/susp license (3 on 3 dates). Active Felony Suffolk County warrant." It is noted that physical force was used to overcome assault and prevent escape. The property voucher for § 87(2)(b) lists assorted clothing (enc. Folder III-14).

The mug-shot of § 87(2)(b) shows a Band-Aid to his left temple and Band-Aids on the back of his head as well as bruising to his forehead (enc.FolderIII-6). The narrative for medical treatment of prisoner report prepared by PO Jose Colon (enc.FolderIII-7) reads: "T/P/O Prisoner was involved in a car accident, suffer laceration on the back of the head, a cut on corner of his left eyebrow, and bruises on the left side of his face. The report was prepared at 0210 on the night of Dec 26, 2000 and notes that § 87(2)(b) was transported to § 87(2)(b). The prisoner holding pen roster for the 040 on the night of the Dec 26, 2000 reflects that at 0210, § 87(2)(b) was taken to § 87(2)(b) and returned at 0445 (enc.Folder III-13).

The narrative of the complaint report (enc.Folder III-8A-B) as prepared by PO Colon reads: "At T/P/O A/O attempted to stop perp vehicle because license plate did not match auto. Perp fled from police leading officer on a 5 minute 3 mile car chase. Perp rammed park mark PMP head on with his car in effort to escape intentionally causing injury to two officers. During flight Perp ran numerous red lights, sped, and drove wrong side of road, almost causing several serious accidents to civilian and police officer alike. Perp also driving w/suspended license (3 on 3 dates). An additional charge: § 87(2)(b) ."

Two copies of The Police Accident Report (enc.Folder III-9A-B) for both PO Donnelly and PO Otero were prepared. A diagram on the report illustrates vehicle #1's collision course with vehicle #2. The narrative notes that vehicle #1 intentionally turned and struck vehicle #2. Lights and sirens had been utilized. Both driver and passenger side airbags were deployed. Captain Girven prepared the report.

Line of Duty Injury Reports (enc.Folder III-10A-B) for PO Donnelly and PO Otero describe that the officers were injured as a result of an intentional vehicle accident. Officer Donnelly sustained a contusion and swelling to his right knee and a laceration to his right hand as a result of striking the dashboard. PO Otero sustained contusion and swelling to his left knee and a swelling to his face as a result of the deployed airbag. Witness statements (enc.Folder III-11A-D) by PO Otero, PO Donnelly, and PO Mendez all similarly describe the collision.

The unusual occurrence report (enc.Folder III-1) prepared by Sgt. Schmidt of the 040 describes the circumstances leading up to the chase with the perpetrator's car eventually driving head on into a stopped marked RMP, injuring both officers. It notes that despite their injuries both officers were instrumental in subduing the perpetrator. It is noted that all units involved in the pursuit responded professionally. Sgt. Schmidt, PO Otero, PO Donnelly, PO Allison, PO Psathas, Sgt. Gossin, PO Colon, and Capt. Gervin are listed as officers present at scene. The FireArms discharge report/Assault report (enc.Folder III-2) reads that an RMP was struck intentionally by a perpetrator's vehicle.

## **SPRINT**

According to the SPRINT printout and tape recording (enc.FolderIII-3A-C) at 23:59 the Sergeants car (RMP 40 ST1) reports that a car has taken off on him. After advising of location, Sergeant requests help from the 41 Precinct. Sirens are heard in the background. The pursuit turns northbound on the Bruckner Blvd and the Sergeant advises Central that they are in control and police cars are helping him out. At 0000, the Sergeant advises central that the vehicle in pursuit is red. The chase briefly goes by the 43 Precinct. The chase enters Hunt's Point. At 0001, a female falls out of the vehicle. The chase continues along Lafayette and enters the Hunt's Point meat market. An unidentified male voice states, "Send me a couple of units down here, we're gonna try and box this clown in." The next location given is Halleck and Ryawa Street. An unidentified male voice states, "We're going towards the barge, we're gonna try and box him in." Another unidentified male voice states, "He's going towards..." before static interferes. From 0003 to 0004, there is a pause in transmission from the RMPs and Central repeatedly asks for location. The next transmission is of an RMP accident by the prison barge. At 0005, RMPs 41A and 41 ST1, 10-84 (arrive at scene). The 40 Sgt. states that a great job was done and a bus (ambulance) has been called for the guys. A Sergeant asks for the location of the fallen female. At 0007, RMPs 41E and 41G, 10-84 (arrive at scene).

At 0009, EMS is on location. Central asks for locations of units. At 0011, the 41 Sgt. replies that all units from the 41 are present. In the transmissions that follow, EMS arrives. A request for the 40 Sgt. is put out. Injured MOS are taken to § 87(2)(b). The license plate of the vehicle is run and central responds with a description. A check of Lafayette street for the fallen female comes back negative.

## Court Documents

[illegible]

## Medical Documents

## FDNY Ambulance Call Report

On the FDNY report (enc.FolderV-1), § 87(2)(b)'s chief complaint is that his face hurts. The report additionally shows that § 87(2)(b) has a small laceration on the occipital region of his scalp as well as minor bleeding that was controlled. The cause is listed as minor motor vehicle injury in which seatbelts were not worn.

§ 87(2)(b) was treated at § 87(2)(b) (enc.FolderV-2A-G) at § 87(2)(b) for injuries sustained in a motor vehicle accident. Medical documentation notes a 3-cm laceration in the occipital region and a 1-cm abrasion in the left supra-orbital area. Bleeding to a laceration on the back of § 87(2)(b)'s head was controlled. § 87(2)(b) additionally complains of tenderness to the rear of his right shoulder that increases when his shoulder is extended.

## Correctional Health Services

§ 87(2)(b) was treated by Correctional Health Services (enc.FolderV-3A-PPP) starting § 87(2)(b). Medical documentation notes abrasions to § 87(2)(b)'s scalp, forehead, arms, and a bruised left knee. There is a cut above § 87(2)(b)'s left eye. § 87(2)(b) received nine staples to a laceration on the back of his head. At this time § 87(2)(b) states that the police beat him.

On January 2, 2001, § 87(2)(b) complains that since his altercation with the police he has suffered from pain to his right shoulder and a tingling in his hands and fingers. A review of an x-ray taken at § 87(2)(b) was negative. On January 5, § 87(2)(b) is still complaining of right shoulder pain and requesting analgesic balm. An examination of his right shoulder is normal. On January 23, 2001, § 87(2)(b) complains of pain to his left ear. An examination does not find anything abnormal besides § 87(2)(b)'s congested sinuses. Another x-ray of his right shoulder is taken before § 87(2)(b) is transferred and is negative.

## Conclusions and Recommendations

## Facts of the case

Based on § 87(2)(b) s and officer statements it is undisputed that on the evening of December 26, 2000, § 87(2)(b) engaged police officers in a vehicle pursuit through the 40 and 41 Precincts. When the chase concluded at Halleck and Ryawa Street, § 87(2)(b) drove head-on into an RMP and was subsequently placed under arrest. Officer statements show that force was utilized to effect arrest. § 87(2)(b) was later treated for a laceration to the back of his head, a laceration above his left eyebrow, as well as bruising and tenderness to his facial areas, stomach, right shoulder, and left knee. § 87(2)(b) alleges that he sustained these injuries as a result of being assaulted and subsequently placed under arrest by the police. Officer statements and police documents, however, contend that § 87(2)(b) sustained his injuries as a result of being in a head-on collision with an RMP. § 87(2)(g)

## Credibility

§ 87(2)(g)

§ 87(2)(f)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Allegations

In his in person statement to CCRB § 87(2)(b) provided descriptions of the subject officers. § 87(2)(g) A photo array was conducted of officers identified as being present at the scene in which § 87(2)(b) identified Sgt. Schmidt, Sgt. Gossin, and PO Mendez as subject officers. § 87(2)(g)

§ 87(2)(b) alleges that Sgt. Schmidt yanked § 87(2)(b) out of the vehicle, sat on top of him, and struck him to the back of his head. According to Sgt. Schmidt, by the time he arrived at the scene, officers were already taking § 87(2)(b) out of the car and handcuffing him. PO Jose Colon stated that Sgt. Schmidt was not involved in handcuffing § 87(2)(b). Besides PO Jose Colon's statements, who is Sgt. Schmidt's partner, no other witness officers were able to identify the officers involved in handcuffing

§ 87(2)(b) § 87(2)(g) Medical documents do show that § 87(2)(b) sustained a scalp laceration that was treated with staples (enc. FolderV-2C) as well as bruising to his forehead and left face (enc. FolderV-3N). § 87(2)(g) § 87(2)(b) additionally selected Sgt. Schmidt from a photo array. § 87(2)(g)

§ 87(2)(b) alleges that Sgt. Gossin punched him in the stomach, consistent with his medically documented complaints of abdominal soreness and tenderness (enc. FolderV-3N). It is additionally noted that § 87(2)(b) attributes these injuries to the alleged assault. However, Sgt. Gossin stated that by the time he arrived at the scene, § 87(2)(b) had already been apprehended and placed in a police vehicle. Sgt. Gossin did admit that though his memo-book noted that he arrived at the scene at 12:18 AM, that might not necessarily be his accurate arrival time. Sgt. Gossin arrived at the scene alone. PO Rogers and PO Giesen interacted with Sgt. Gossin after the allegations took place. § 87(2)(g)

§ 87(2)(b) alleges that PO Mendez kicked him in the chest. PO Mendez admits to a certain amount of force in that he held down on § 87(2)(b)'s shoulder while other officers handcuffed him. However, he denied any amount of force beyond this. PO George Colon, PO Mendez's partner, admits that following the collision PO Mendez exited the vehicle and PO George Colon lost sight of him for up to ten minutes. PO George Colon described a struggle in which he could not identify any officers because they all had their backs to him and no witness officers were able to identify the officers involved in handcuffing § 87(2)(b). PO Mendez himself stated that he was so involved in pressing down on § 87(2)(b)'s shoulder he could not identify who he was assisting. § 87(2)(g)

Medical documents (enc. FolderV-3N) show that § 87(2)(b) complained of abdominal soreness and tenderness and § 87(2)(b) selected PO Mendez in a photo array. § 87(2)(g)

§ 87(2)(b) admitted in his in person statement to the CCRB that he would not be able to identify officers who kicked and stomped upon him as he was lying facedown nor provide a description. § 87(2)(g)

§ 87(2)(b) also alleges that Sgt. Schmidt, Sgt. Gossin, and PO Mendez made threatening, discourteous, and offensive remarks to him. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: